U.S. Department of Justice

Immigration and Naturalization Service

*OFFICE OF ADMINISTRATIVE APPEALS*
*425 Eye Street N.W.*
*ULLB, 3rd Floor*
*Washington, D.C. 20536*

[redacted]

Public Copy

MAY 7 2001

File: WAC-97-205-51687 Office: California Service Center Date:

IN RE: Petitioner: [redacted]

Petition: Immigrant Petition by Alien Entrepreneur Pursuant to § 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(5)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

**DISCUSSION:** The approved preference visa petition was revoked by the Director, California Service Center. That decision was affirmed on review by that office. The case is now before the Associate Commissioner for Examinations on certification. The director's decision to revoke the approval will be affirmed.

The petitioner seeks classification as an alien entrepreneur pursuant to § 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(5).

On December 19, 1997, the director approved the petition and forwarded it to the United States consulate in Hong Kong. That post returned the petition for reconsideration, questioning whether the "gift" to the petitioner was not, in fact, a loan.

Upon review, the director determined that the petitioner's claimed investment funds were the proceeds of an unsecured loan, not a gift, and issued a notice of intent to revoke on March 31, 1999. In addition to the loan issue, the director also requested additional evidence that the petitioner had invested in a targeted employment area, that he had established a new commercial enterprise, that he had placed his capital at risk, that he obtained his funds through lawful means, that he would create the necessary employment, and that he would be engaged in the management of the business. Finally, the director requested specific evidence of business operations and the viability of the business. Thus, the petitioner was placed on notice of deficiencies in the record beyond the issue of whether he obtained his funds by loan or gift.

On July 1, 1999, the director revoked the petition based on the petitioner's alleged failure to respond to the March 31, 1999 notice. On July 13, 1999, the petitioner filed an appeal with fee, noting that he had, in fact, responded to the director's decision. On November 2, 1999, the director issued a notice to the petitioner acknowledging that he had responded to the notice of intent to revoke, concluding that the petitioner had essentially resubmitted documentation already in the record, and determining the petitioner had not overcome the issues in the notice of intent to revoke. The notice further advised the applicant:

> As such, the petitioner is hereby accorded eighteen (18) days from the date of this notice to submit the additional evidence that was previously requested -- or to submit any other evidence which you wish to have considered in these proceedings -- after which time, the petition and evidence of record will be forwarded to the Administrative Appeals Office (AAO).

The petitioner has submitted no additional documentation.

Section 203(b)(5)(A) of the Act provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

> (i) which the alien has established,
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> (ii) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and
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> (iii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

**MINIMUM INVESTMENT AMOUNT**

The petitioner indicates that the petition is based on an investment in a business located in a targeted employment area for which the required amount of capital invested has been adjusted downward to $500,000.

8 C.F.R. 204.6(e) states, in pertinent part, that:

> *Targeted employment area* means an area which, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate.

8 C.F.R. 204.6(j)(6) states that:

> If applicable, to show that the new commercial enterprise has created or will create employment in a targeted employment area, the petition must be accompanied by:
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> (i) In the case of a rural area, evidence that the new commercial enterprise is principally doing business within a civil jurisdiction not located within any standard metropolitan statistical area as designated by the Office of Management and Budget, or within any city or town having a population of 20,000 or more as based on the most recent decennial census of the United States; or
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> (ii) In the case of a high unemployment area:

> (A) Evidence that the metropolitan statistical area, the specific county within a metropolitan statistical area, or the county in which a city or town with a population of 20,000 or more is located, in which the new commercial enterprise is principally doing business has experienced an average unemployment rate of 150 percent of the national average rate; or
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> (B) A letter from an authorized body of the government of the state in which the new commercial enterprise is located which certifies that the geographic or political subdivision of the metropolitan statistical area or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business has been designated a high unemployment area. The letter must meet the requirements of 8 C.F.R. 204.6(i).

On the Form I-526, the petitioner indicated the new commercial enterprise was Timely, Inc., located in Oakland California.[1] The petitioner submitted a lease for the space in Oakland and 1995 data indicating the unemployment rate was more than 150 percent of the national rate.

The regulations provide that the area must be a targeted employment area at the time the investment is made and Matter of Soffici, I.D. 3359 (Assoc. Comm., Examinations, June 30, 1998) provides that the location must remain a targeted employment area at the time of filing. The petitioner claims to have made his investment on June 6, 1997, and the petition was filed July 25, 1997. The unemployment data provided was for two years prior to the alleged investment and the date of filing. In her notice of intent to revoke, the director requested additional evidence regarding whether Oakland was a targeted employment area. The petitioner failed to provide 1997 statistics. As such, the petitioner has failed to establish that the new commercial enterprise was located in a targeted employment area at the time of filing. Therefore, the minimum investment amount in this case is $1,000,000.

**CAPITAL PLACED AT RISK**

8 C.F.R. 204.6(e) states, in pertinent part, that:

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[1] The petitioner actually indicated the name of the company was "Timely Mfg., Co.," however, all of the documents in the record pertain to Timely, Inc. The record contains no documentation pertaining to "Timely Mfg., Co." Therefore, it must be assumed the petitioner is claiming Timely, Inc. is the new commercial enterprise.

*Capital* means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. ...

*Invest* means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

8 C.F.R. 204.6(j) states, in pertinent part, that:

(2) To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital. Such evidence may include, but need not be limited to:

(i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;

(ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices; sales receipts; and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;

(iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;

(iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring

> the new commercial enterprise to redeem it at the holder's request; or
>
> (v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

In support of the petition, the petitioner submitted an escrow agreement between him and [redacted] of Timely, Inc. indicating that $500,000 would be placed in an escrow account at Citibank, account number [redacted]. The agreement provides:

> Release of any funds from said account is conditioned on the exclusive approval of [the petitioner] and further conditioned on the approval application as based on the Employment Creation Based category 5 (EB-5) for [the petitioner]. Release of monies must take the signature of [the petitioner] only.

The petitioner also submitted a June 13, 1997 letter from a manager at Citibank indicating [redacted] with an address in Union City, California, opened bank account [redacted] which maintained a balance of $499,974 as of the date of the letter.

In response to an October 1, 1997 request for additional evidence, the petitioner claimed the funds were a "gift" from his fellow shareholder. The petitioner submitted the August, September, and October 1997 Citibank bank statements for [redacted]. reflecting three accounts, none of which are number [redacted]. The statements reflect two business certificates of deposit with balances of a little over $500,000 each. The petitioner also submitted an agreement between the petitioner and [redacted], the other alleged 50 percent owner of [redacted]., with English translation. According to the translation, the agreement provides:

> [redacted] agreed to invest $500,000 into [redacted]. in the United States and own 50% shares of the corporation and petition for investment immigration in the United States. [redacted] agreed to give $500,000 to [the petitioner]. [The petitioner] must invest this $500,000 into [redacted] and owns 50% share of the corporation and petition for investment immigration in the United States.

According to the translation, section 4 of the agreement provides that Mr. [redacted] will not receive a salary or other benefits, directly or indirectly. However, a review of the Chinese characters on the original document reveals that section 4 actually refers to the

petitioner. Thus, the agreement provides that in exchange for a $500,000 "gift," the petitioner must forfeit his salary.

Upon reviewing the approved petition, the director concluded that the agreement actually constituted a loan from Mr. [redacted] to the petitioner, whereby the petitioner would repay the $500,000 by forfeiting any salary. The director noted that this loan was unsecured by the petitioner's personal assets.

In response to the director's notice of intent to revoke, counsel argues, "the amount was a gift in exchange for his commitment to work at [redacted]," and that "there was no evidence anywhere on the record to indicate there was a loan." The petitioner resubmitted the agreement.

In her final notice, the director noted the petitioner had not submitted any new evidence regarding this issue and concluded the revocation should be affirmed.

First, the record does not reflect that Mr. [redacted] actually transferred the $500,000 to the petitioner or that the petitioner transferred the funds to the alleged escrow account. The petitioner submitted a wire transfer application requesting the transfer of $500,000 from his account in Hong Kong to the alleged escrow account. This application does not establish the petitioner received any funds from Mr. [redacted] or that the funds were actually transferred as requested. As stated previously, the bank letter does not indicate the source of the funds in the "escrow account." Therefore, the record does not support the petitioner's claim to have received funds from Mr. [redacted] or to have transferred them to the "escrow account."

Regardless, even if the record established that Mr. [redacted] did transfer the funds to the petitioner and the petitioner did transfer the funds to the "escrow account," the arrangement did not constitute a qualifying investment of the petitioner's funds. The record is not conclusive that the agreement reflects a loan arrangement. While the money was allegedly given to the petitioner upon the condition that he invest the money in the company and that he work for the company without salary or benefits, the salary and benefits are forfeited back to the company, not Mr. [redacted] As a corporation is a separate legal entity from its shareholders, even if the record established that Mr. [redacted] was a shareholder, money forfeited to the corporation is not equivalent to the repayment of funds to Mr. [redacted][2]

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[2] Without evidence of the source of the $500,000 the petitioner allegedly transferred to the "escrow" account, the petitioner cannot establish that the funds were provided by Mr. [redacted] If the funds actually came from the business, then it could

Even if the transaction is not a loan, however, it also does not appear to be a true gift.[3] The agreement between the petitioner and Mr. [redacted] does not contain the word "gift," but rather indicates Mr. [redacted] will "give" the money to the petitioner. According to the Merriam-Webster Dictionary 304 (1974), "give" can include "to put into the possession or keeping of another," and, thus, does not necessarily involve a change in title as well as possession. The remaining terms of the agreement between the petitioner and Mr. [redacted] reflect that the arrangement is more like a bailment than a gift. Black's Law Dictionary 136 (7th ed. 1999) defines a bailment as:

> A delivery of personal property by one person (the bailor) to another (the bailee) who holds the property for a certain purpose under an express or implied-in-fact contract.

The agreement in question provides that the money was only transferred to the petitioner for the express purpose of investing it in [redacted], clearly meeting the definition of "bailment." Black's Law Dictionary further provides that in a bailment situation, no change in title takes place.[4]

As a bailment, the arrangement fails to place any of the petitioner's personal assets at risk. The transaction failed to increase the petitioner's net worth. He allegedly took possession of $500,000 with the condition that it be invested into the new commercial enterprise. Thus, the petitioner has not risked his own personal assets. Had the funds been truly gifted to the petitioner to be used as he pleased, the act of investing those funds would

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be argued the business loaned the petitioner the $500,000 to be repaid by the petitioner's forfeiture of salary.

[3] Black's Law Dictionary 696 (7th ed. 1999) defines a gift as the "act of voluntarily transferring property to another without compensation."

[4] It is acknowledged that the petitioner allegedly received a 50 percent ownership in the corporation in exchange for the "investment." First, there is no evidence Mr. [redacted] had the authority to give the petitioner such an interest as the record does not indicate Mr. [redacted] is a shareholder, director, or officer of [redacted] Moreover, as conceded by counsel, corporations often provide ownership interest in exchange for services. Thus, the 50 percent interest could be considered compensation for the petitioner's agreement to work without salary or benefits and does not affect our conclusion that the petitioner merely served as bailee for the $500,000.

place his net worth at risk. In this case, the petitioner is not at risk of losing any funds.

Finally, the alleged "escrow agreement" does not constitute a true escrow agreement. Black's Law Dictionary 564 (7th ed. 1999) defines escrow as:

> A legal document or property delivered by a promisor to a third party to be held by the third party for a given amount of time or until the occurrence of a condition, at which time the third party is to hand over the document or property to the promisee.

An escrow account is defined as:

> A bank account, generally held in the name of the depositor and an escrow agent, that is returnable to the depositor or paid to a third person on the fulfillment of specified conditions.

Id. at 18. First, the "escrow agreement" provided does not involve three parties. Only [redacted], on behalf of the corporation, and the petitioner signed the agreement. No escrow agent is identified. In addition, the escrow agreement does not provide to whom the money shall be released. Further, the bank letter makes no reference to the fact that the account is allegedly an escrow account. Finally, as stated in the definition above, escrow accounts are normally held in the name of the depositor and an escrow agent. The account alleged to be an escrow account is held in the name of the corporation only, whereas the petitioner is the alleged depositor.

While the petitioner could argue in response that the record actually reflects that the petitioner simply transferred the funds straight to the business without going through an escrow account first, the record is inconsistent regarding this issue. The wire transfer application lists the beneficiary of the wire transfer as the petitioner, not the business. While the account number is the same as the account number referenced on the bank letter indicating Timely, Inc. as the account holder, it remains the record is inconsistent. Moreover, the bank letter is dated June 13, 1997. The bank statements for August, September, and October 1997 do not reflect that the corporation owns an account with that number. Without transactional documentation reflecting the transfer of that money to another account, it cannot be determined where the money in the "escrow account" went.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will

not suffice. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has failed to resolve the inconsistencies discussed above.

In light of the above, the petitioner has failed to establish that he deposited any funds into an irrevocable escrow account in favor of the corporation.

For all the reasons discussed above, the petitioner has failed to demonstrate an investment of $1,000,000 or even $500,000.

**SOURCE OF FUNDS**

8 C.F.R. 204.6(j) states, in pertinent part, that:

> (3) To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:
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> (i) Foreign business registration records;
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> (ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;
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> (iii) Evidence identifying any other source(s) of capital; or
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> (iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds. Matter of Ho, I.D. 3362 (Assoc. Comm., Examinations July 31, 1998) at 6; Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations July 31, 1998) at 26. Without documentation of the path of the funds, the petitioner cannot meet his burden of establishing that the funds are his own funds. Id. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these

proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

In response to the October 1, 1997 request for additional documentation, counsel submitted the wire transfer application reflecting the petitioner applied to transfer $500,000 to account number 670053115, identified on the application as the petitioner's personal account, but identified in the bank letter as the corporation's account. Counsel further asserted that, as the petitioner received his funds from [redacted], no additional evidence of source of funds was required.

Even if we accepted the wire transfer application as evidence that the petitioner was the source of the $500,000 transferred to account number [redacted], the record contains no evidence Mr. [redacted] ever transferred any funds to the petitioner. In addition, the inquiry into the lawful source of investment funds does not end upon a petitioner's claim that his funds include a "gift." Any petitioner intending to conceal the true source of his funds, such as, for example, a third-party loan, criminal or other unlawful activity, or earnings not subjected to appropriate taxation, could offer the convenient explanation that the funds were a gift. Presenting a corroborating statement from a family member or "friend" would not be difficult, nor would transferring the funds first to the family member's account and then documenting their transfer into a newly established account belonging to the petitioner. The petitioner should not interpret this as an accusation that he has engaged in wrongdoing with respect to the source of his funds; rather, this is an explanation of why the Service cannot merely accept without further question every claim that funds are a "gift" and therefore lawfully obtained.

In light of the above, the petitioner has not established the lawful source of the funds in his personal account which were then allegedly transferred to the "escrow" account. Regardless, even if we accepted the petitioner's claim to have received the funds from [redacted], as discussed above, the petitioner was merely a bailee for those funds, and never had title to the funds. Therefore, the source of those funds is moot.

**ESTABLISHMENT OF A NEW COMMERCIAL ENTERPRISE**

Section 203(b)(5)(A)(i) of the Act states, in pertinent part, that: "Visas shall be made available . . . to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise . . . *which the alien has established* . . . ." (Emphasis added.)

8 C.F.R. 204.6(h) states that the establishment of a new commercial enterprise may consist of the following:

(1) The creation of an original business;

(2) The purchase of an existing business and simultaneous or subsequent restructuring or reorganization such that a new commercial enterprise results; or

(3) The expansion of an existing business through the investment of the required amount, so that a substantial change in the net worth or number of employees results from the investment of capital. Substantial change means a 40 percent increase either in the net worth, or in the number of employees, so that the new net worth, or number of employees amounts to at least 140 percent of the pre-expansion net worth or number of employees. Establishment of a new commercial enterprise in this manner does not exempt the petitioner from the requirements of 8 CFR 204.6(j)(2) and (3) relating to the required amount of capital investment and the creation of full-time employment for ten qualifying employees. In the case of a capital investment in a troubled business, employment creation may meet the criteria set forth in 8 CFR 204.6(j)(4)(ii).

According to the plain language of section 203(b)(5)(A)(i) of the Act, a petitioner must show that he is seeking to enter the United States for the purpose of engaging in a new commercial enterprise that he has established. The alleged new commercial enterprise at issue here is [redacted]

The petitioner initially submitted the articles of incorporation filed April 30, 1997, by [redacted]. This document, while demonstrating that [redacted] is "new," does not establish that the petitioner participated in the establishment of the company.

In response to the notice of intent to revoke, the petitioner submitted Form SS-4 Application for Employer Identification Number, Statement by Domestic Stock Corporation, Minutes of Organizational Meeting, stock certificates, stock ledger, a notice of transaction, and a commercial lease.

The Form SS-4 was completed on May 5, 1997 by [redacted], President. The Statement by [redacted] reflects [redacted] is the CEO, Secretary, CFO, and the sole director. No other officer or director is identified on the form. The Minutes of the Organizational Meeting reflect that Ms. [redacted] and [redacted] were the only people present and that they elected Ms. [redacted] president, vice president, secretary, and CFO. The minutes indicate the Board resolved to issue 100,000 shares to the individual listed on Schedule A. Schedule A is not in the record. The stock certificate and stock ledger, however, reflect that Ms. [redacted] purchased 100,000 shares of stock on November 1, 1997 for

$100,000. The stock ledger does not reflect that any other individual has purchased any shares in [redacted]. Finally, the notice of transaction, dated November 1, 1997, reported the sale of only $100,000 worth of stock.

In view of the above, the petitioner has not demonstrated that he participated in the establishment of the corporation or even that he had any ownership interest whatsoever in the corporation as of the date of filing. Moreover, his claim to be a joint, 50-50 owner with Mr. [redacted] is suspect as the record fails to indicate that Mr. [redacted] has any ownership interest in the corporation.[5]

**EMPLOYMENT CREATION**

8 C.F.R. 204.6(j)(4)(i) states:

> To show that a new commercial enterprise will create not fewer than ten (10) full-time positions for qualifying employees, the petition must be accompanied by:
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> (A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
>
> (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

8 C.F.R. 204.6(e) states, in pertinent part:

> *Full-time employment* means employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week.
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> *Qualifying employee* means a United States citizen, a lawfully admitted permanent resident, or other immigrant lawfully authorized to be employed in the United States

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[5] As Mr. [redacted] has no ownership interest and is not a director or officer of the corporation, his agreement with the petitioner regarding his future managerial responsibilities with the corporation is meaningless. Thus, the petitioner has also failed to establish that he will be involved in the management of the business.

> including, but not limited to, a conditional resident, a temporary resident, an asylee, a refugee, or an alien remaining in the United States under suspension of deportation. This definition does not include the alien entrepreneur, the alien entrepreneur's spouse, sons, or daughters, or any nonimmigrant alien.

Finally, 8 C.F.R. 204.6(g)(2) relates to multiple investors and states, in pertinent part:

> The total number of full-time positions created for qualifying employees shall be allocated solely to those alien entrepreneurs who have used the establishment of the new commercial enterprise as the basis of a petition on Form I-526. No allocation need be made among persons not seeking classification under section 203(b)(5) of the Act or among non-natural persons, either foreign or domestic. The Service shall recognize any reasonable agreement made among the alien entrepreneurs in regard to the identification and allocation of such qualifying positions.

The petitioner has submitted employment records reflecting the employment of 13 employees, 12 of whom work full-time. As the petitioner is allegedly a joint owner with another applicant under the entrepreneur program, the petitioner must demonstrate 20 new jobs.

Pursuant to 8 C.F.R. 204.6(j)(4)(i)(B), if the employment-creation requirement has not been satisfied prior to filing the petition, the petitioner must submit a "comprehensive business plan" which demonstrates that "due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired." To be considered comprehensive, a business plan must be sufficiently detailed to permit the Service to reasonably conclude that the enterprise has the potential to meet the job-creation requirements.

A comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products and/or services, and its objectives. Matter of Ho, supra. Elaborating on the contents of an acceptable business plan, Matter of Ho states the following:

> The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of

> the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

The initial two-page business plan submitted indicates only, "Timely will expand its staff in the third year by ten and significantly increase its production volume." The record, however, does not indicate the number of employees at the time the plan was created. The business plan fails to meet the requirements discussed above. Specifically, the plan does not indicate the total of number of employees projected, include an explanation of the staffing requirements or a timetable for hiring. In addition, the plan fails to evaluate similar businesses. In response to the notice of intent to revoke, the petitioner submitted a "Projected Timely Organization Chart" for two years after being "fully set-up." The chart calls for a total of 50 employees. The petitioner initially claimed that he would only increase the number of employees at the time of filing (July 1997) by 10 workers and only documented 12 full-time employees as of November 7, 1997. The petitioner provides no explanation for the sudden increase in projected employment to 50 workers. In addition, the chart is not supported by a business plan. Therefore, the chart amounts to mere speculation.

For all of the reasons set forth above, considered in sum and as alternative grounds for denial, this petition cannot be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.